

The Orissa



Gazette

EXTRAORDINARY
PUBLISHED BY AUTHORITY

No. 1067 CUTTACK, WEDNESDAY, JUNE 27, 2007/ASADHA 6, 1929

LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 1st June 2007

No. 7192—II/1 (J)-4/2004-L.E.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 19th June 2006 in I. D. Case No. 11/2004 of the Presiding Officer, Labour Court, Jeypore to whom the industrial dispute between the Principal, D.A.V. Public School, Gandhi Nagar 2nd Lane, Berhampur and its workman Shri Bhikari Nayak, Ex-Watchman was referred for adjudication is hereby published as in the Schedule below:

SCHEDULE

IN THE COURT OF THE PRESIDING OFFICER, LABOUR COURT
JEYPORE, KORAPUT

INDUSTRIAL DISPUTE CASE No. 11 OF 2004

Dated the 19th June 2006

Present:

Shri R. K. Saran,
Presiding Officer, Labour Court,
Jeypore, Dist. Koraput.

Between:

The Principal, M/s D. A. V. Public School, — First Party—Management
Gandhi Nagar, Berhampur,
At/P.O. Berhampur, Dist. Ganjam.

Versus

Its Workman, — Second Party—Workman
Shri Bhikari Nayak near Prasadkala
Tirtha and Municipal Barracks
High School side Gandhi Nagar, 3rd Line,
Berhampur, At/P.O. Berhampur, Dist. Ganjam.

Under Sections:—10 and 12 of the Industrial Disputes Act, 1947.

Appearances:

Shri N. V. Rama Murty, Head Clerk, D. A. V. School, Berhampur.	... For the First Party—Management
Shri B. Padhy Advocate, Jeypore	.. For the Second Party—Workman
Date of Argument	.. 12-6-2006
Date of Award	.. 19-6-2006

AWARD

This is a reference u/s 10 (1) read with Section 12 (5) of the Industrial Disputes Act, 1947 made by the State Government of Orissa in their Labour & Employment Department Memo No. 9065 (5), L.E., dated the 11th October 2004 for adjudication of the dispute mentioned below :

SCHEDULE

"Whether the termination of services of Shri Bhikari Nayak, Watchman by the Management of M/s D. A. V. Public School, Gandhinagar, Berhampur with effect from the 10th July 2003 is legal and/or justified ? If not, to what relief is Shri Nayak entitled to ?"

2. The reference received from the Government is as follows. After receipt of the reference both parties are noticed objection filed, second party-workman has been examined and cross-examined and he filed documents as per list. So also the Management witness, i.e the Principal of the D. A. V Public School has been examined and cross-examined and she filed documents as per list. Heard argument on the earlier date.

3. The first limb of argument of the learned counsel for the workman is that, the enquiry has not been properly done. The Enquiry Report has not been served on the second party-workman which is a great lacuna. The punishment given on the basis of the Enquiry Report is much harsh and disproportionate. The counsel submits that the workman should be reinstated in the School.

4. On the other hand the Management representative submits that the Institution is an educational institute having nationwide fame and, it is running only with the assistance of the parents and by the faithful and sincere worker and teaching staff who were doing their duties with dedication. She further submits that, due to the misconduct of the workman who is coming to School in drunken stage and a Police case against him has been started that prompted the Principal to order an enquiry. After submission of enquiry report by the Enquiry Officer, she has no alternative to dismiss the workman. She has stated that she has to take stringent steps to save the prestige of the students of the School. The Principal in her evidence has stated that the workman remain in School with outsiders and was taking liquor, he was asked to show cause vide Ext. E. The workman gave show cause vide Ext. F where he has denied that he has never took liquor nor brought outsiders to School premises. But on the other hand the management submitted Ext. B where the workman has admitted that he took liquor on the 10th October 2001 and further undertakes he would not bring any outsiders except his wife and children who are staying in the School premises. The Enquiry Report though cryptic but, it proves that the workman use to take liquor and there is a criminal case against him. Moreover, the workman never challenged the fairness of the Enquiry Officer or the manner of enquiry. The Principal in her evidence further stated that one of the guardian of her student gave a written complaint vide Ext. D with enclosures which shows that a Criminal Case u/s 420, I. P. C. is pending against the workman and the workman was detained in custody. The Principal further stated that when the guardian of the students in whose money the insecured she was constrained to start enquiry against the workman, The allegation that the Enquiry Report was not served on the workman has no foundation because the Enquiry Report was served on

the workman through under certificate of posting, which was returned back to the Principal M. W. I. Subsequently, the Principal sent the show cause by peon book to the workman and proved the portion marked Ext.-J which shows that the workman did not received the report of the Enquiry Officer. The learned counsel for the workman submits that the letter was not posted by Regd. Post with A. D. for which, the proceeding is vitiated and cannot be accepted. But it is seen letter was issued to the workman and returned back. Moreover, the learned counsel for the workman has submitted that the person made the enquiry in the peon book has not been examined nor that is strictly proved. So report has not been properly served. This Court is a Court of Enquiry and not a Court of Trial and the peon book and other documents are properly maintained in the School. The Principal proved the peon book so also the letter sent under certificate of posting, therefore, it cannot be said the proper procedure has not been followed.

5. The 3rd limb of argument of learned counsel of the workman is that, the punishment given to the workman is disproportionate then that of the mischief, he committed to this Court urged to some extent so far as the submission of the learned counsel of the workman. But as a Court, this Court does not want that a alcohol taking person, person having criminal background to continue in the School in any post. Continuance of such person not only spoil the sanctity of the Institution but, also affect the morals of the lady teachers and young girl students reading there.

6. In the opinion of the Court it will be appropriate the order of dismissal should be converted to the order of termination and the dues of the workman be paid to him.

With this observation the reference is answered accordingly.

Dictated and corrected by me.

R. K. SARAN

19-6-2006

Presiding Officer
Labour Court,
Jeypore

R. K. SARAN

19-6-2006

Presiding Officer,
Labour Court,
Jeypore

By order of the Governor

N. C. RAY

Under-Secretary to Government